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Boynton Beach, FL 33436

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NOV 16 2005

**OFFICE OF PETITIONS**

In re Application of  
Paul B. McKee  
Application No. 10/647,753  
Filed: August 26, 2003  
For: Dual Flush Adapter – For Toilet Valve

**DECISION ON PETITION**

This is a decision on the petition filed on October 6, 2005, and again on October 20, 2005, which is being treated as a feeless petition under 37 CFR 1.181, to withdraw the holding of abandonment.

On July 7, 2004, the USPTO mailed petitioner a nonfinal Office Action, which set a three-month shortened statutory period for reply. On July 19, 2004, petitioner submitted an amendment in response to the nonfinal Office Action. On August 25, 2004, the USPTO mailed petitioner a Notice of Non-Compliant Amendment, stating that the amendment to the claims filed on July 19, 2004, is considered non-compliant because it failed to meet the requirements of 37 CFR 1.121. The Notice set a one-month extendable period from the mailing of the Notice within which to submit a compliant amendment. On September 26, 2004, the application became abandoned for failure to submit a timely reply to the Notice of Non-Compliant Amendment. On September 2, 2005, the USPTO mailed petitioner a Notice of Abandonment.

***PETITION UNDER 37 CFR 1.181:***

In the present petition, petitioner stated: "I have no intention of abandonment but every request for change does not seem to get thru to him (Robert Fetsuga – Examiner). I have made every change that he has asked for and sent back to him within 7 days."

After reviewing the documents submitted by petitioner, it does not appear that petitioner filed an amendment in compliance with 37 CFR 1.121 previously or with the present petition in response to the Notice of Non-Compliant Amendment. A copy of the Notice of Non-Compliant Amendment dated August 25, 2004, and a written explanation of the amendment formation required by 37 CFR 1.121 accompany this decision for petitioner's convenience.

In view of the above, the petition to withdraw the holding of abandonment is **dismissed**.

The Office strongly suggests that petitioner file a petition under 37 CFR 1.137(b) to revive the application. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) The reply required to the outstanding Notice of Non-Compliant Amendment in the form of an amendment in compliance with 37 CFR 1.121.

(2) **The petition fee in the amount of \$750.00;**

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

For petitioner's convenience, a form for filing a petition under 37 CFR 1.137(b) is enclosed.

Before the application can be revived, petitioner must submit a completed petition form, a \$750.00 fee, and a compliant amendment to the USPTO as indicated below. Petitioner may wish to seek the advice of a registered patent attorney or agent to assist him in this matter and in prosecuting this application. Additionally, petitioner may wish to contact the Inventors Assistance Center at 800-786-9199 or 571-272-1000.

Correspondence with respect to this matter should be addressed as follows:

By mail:      Mail Stop Petition  
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By FAX:      (571) 273-8300  
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Telephone inquiries should be directed to the undersigned at (571) 272-3211.

*Christina Tartera Donnell*

Christina Tartera Donnell  
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Office of Petitions

Enclosures: PTO/SB/64 - Petition For Revival Of An Application For Patent Abandoned Unintentionally, Privacy Act Statement, Notice of Non-Compliant Amendment, and Revised Amendment Practice Flyer